

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 606 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHANSIRAM M YADAV, SINCE DECEASED THROUGH HIERS AND LEGAL RE.

Versus

COMMANDANT

Appearance:

MR IS SUPEHIA for Petitioners
MR SP HASURKAR for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 15/09/2000

ORAL JUDGEMENT

#. Heard Learned Counsel Mr.A.S.Supehia, for the
petitioner and Learned Counsel A.J.Desai with Learned
Counsel Mr.S.P.Hasurkar, for the respondents. It is
stated at the bar that the original petitioner has

expired on 6.10.1995 and therefore his heirs and legal representatives are joined as the petitioner. The petition seeks to challenge the order of compulsory retirement of the original petitioner by way of punishment at the end of departmental inquiry. It is submitted on behalf of the petitioner, that the original petitioner had made a detailed representation in reply to the show cause notice which was issued before the punishment was imposed. It appears from the record that after considering the representation of the petitioner the order of removal from service was passed on 18.7.1988. Thereafter, the original petitioner had preferred departmental appeal and again his representation was taken into account, but in view of the gravity of the misconduct and the discipline required in the department, the punishment of removal was reduced to compulsory retirement by the order dated 12.1.1988. The Learned Counsel has referred to the detailed representation made in reply to the show cause notice and argued that the contentions therein are not dealt with in detail by the punishing as well as appellate authority.

#. It is significant to note that the petitioner has not produced or annexed with the petition the report of the Inquiry Officer. Therefore, it is difficult to appreciate as to what had weighed with the Inquiry Officer in recording the finding wherein the misconduct was held to have been proved. It would be very difficult and improper for this court and at this stage to entertain any dispute about the propriety of the findings which are not placed on record. It would also be improper to expect the disciplinary or the appellate authority to deal with in detail each and every contentions that the original petitioner has raised in his detailed representation running into 49 pages. Under such circumstances, the Learned Counsel for the petitioner has fairly conceded that the petitioner would be satisfied, if the respondents are directed to consider the case of the petitioner for compassionate pension under Rule 251(7) of the Bombay Civil Service Rule 1959. The Learned Counsel for the respondents have no objection if such a direction is issued.

#. Accordingly in the peculiar facts and circumstances of the case and for the reasons discussed hereinabove the respondent nos.2 and 3 are directed to consider the case of the petitioners for compassionate pension under Sub Rule 7 of Rule 251 of the BCSR if a representation for that purpose is made by the petitioners. The said respondents shall sympathetically and expeditiously consider the representation and decide the same in

accordance with law within 2 months of its receipt. Rule made absolute in the terms as above, with no order as to costs.

kks